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DEPARTMENT OF EDUCATION

[Docket ID ED-2019-OCTAE-0007]

Proposed Requirements and Definitions--Tribally Controlled
Postsecondary Career and Technical Institutions Program

AGENCY: Office of Career, Technical, and Adult Education,
Department of Education.

ACTION: Proposed requirements and definitions.

SUMMARY: The Assistant Secretary for Career, Technical,
and Adult Education proposes requirements and definitions
under the Tribally Controlled Postsecondary Career and
Technical Institutions Program (TCPCTIP), Catalog of
Federal Domestic Assistance (CFDA) number 84.245. The
Assistant Secretary may use these requirements and
definitions for a competition in fiscal year (FY) 2019 and
in later years. We propose these requirements and
definitions to clarify the circumstances under which
stipends may be paid to students attending tribally
controlled postsecondary career and technical institutions
and to establish requirements applicants must meet to
demonstrate that they (1) are eligible for assistance under

TCPCTIP and (2) will use grant funds in accordance with statutory requirements.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to Use Regulations.gov."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about this notice of proposed requirements and definitions, address them to Kiawanta Hunter-Keiser, U.S. Department of Education, 400

Maryland Avenue, SW., room 11-119, Potomac Center Plaza (PCP), Washington, DC 20202-7241.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kiawanta Hunter-Keiser, U.S. Department of Education, 400 Maryland Avenue, SW., room 11-119, PCP, Washington, DC 20202-7241. Telephone: (202) 245-7724. Email: Kiawanta.Hunter-Keiser@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed requirements and definitions. To ensure that your comments have maximum effect in developing the notice of final requirements and definitions, we urge you to identify clearly the specific proposed requirement or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed requirements and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed requirements and definitions by accessing Regulations.gov. You may also inspect the comments in person in room 11-119, PCP, 400 Maryland Avenue, SW., Washington, DC, between 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this document. If you want to schedule an appointment

for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: Section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115-224) (Perkins V or the Act) authorizes the Secretary to make grants to tribally controlled postsecondary career and technical institutions that do not receive Federal support under Title I of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1802 et seq.) or the Navajo Community College Act (Pub. L. 92-189; 85 Stat. 646) for career and technical education programs for Indian students and for the institutional support costs of the grant.

Program Authority: Section 117 of Perkins V (20 U.S.C. 2327).

PROPOSED REQUIREMENTS:

Application Requirements:

The Assistant Secretary proposes the following application requirements for this program. We may apply one or more of these requirements in any year in which this

program is in effect.

Background:

We propose to establish six application requirements for TCPCTIP competitions to enable us to determine the eligibility of an applicant for assistance; evaluate the extent to which its proposed uses of funds are allowable under section 117; determine the extent to which the grant amount it has requested is reasonable and necessary; identify the goals and objectives that the applicant hopes to achieve with the proposed project; and determine whether the procedures the applicant proposes to use with respect to the award of student stipends are consistent with the program requirements related to student stipends that we also propose to establish. The six proposed application requirements are similar to the application requirements used in the notice inviting applications for the last TCPCTIP competition that we held in FY 2007 (see 72 FR 27297, May 15, 2007) (May 2007 Notice) following the enactment of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV).

The proposed application requirements omit an application requirement from the May 2007 Notice that asked

applicants to identify “long-range and short-range needs,” including the “institution’s plans for the placement of students (e.g., placement into additional training or education, military service, or employment).” We do not include this May 2007 application requirement because it duplicates proposed application requirement (d), which asks applicants to set out “goals and objectives” for the proposed project.

Proposed Application Requirements:

To receive a TCPCTIP grant, an applicant must include one or more of the following in its application:

(a) Documentation showing that the applicant is eligible, according to each of the requirements in the Eligible Applicants section of this notice (and pursuant to sections 117(a) and (d) of Perkins V), including meeting the definition of the terms “tribally controlled postsecondary career and technical institution” and “institution of higher education” (e.g., proof of the institution’s accreditation status) and certification that the institution does not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community

College Act (Pub. L. 92-189; 85 Stat. 646).

(b) Descriptions of the career and technical education programs, including academic courses, to be supported under the proposed TCPCTIP project. Projects funded under this competition must propose organized educational activities that meet the definition of career and technical education, as that term is defined in section 3(5) of the Act.

(c) The estimated number of students to be served by the proposed project in each career and technical education program in each year of the project.

(d) Goals and objectives for the proposed project, including how the attainment of the goals and objectives would further Tribal economic development plans, if any.

(e) A detailed budget identifying the costs to be paid with funds under this program for each year of the project period, and resources available from other Federal, State, and local sources, including any student financial aid, that will be used to achieve the goals and objectives of the proposed project.

(f) A description of the procedure the applicant intends to use to determine student eligibility for

stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

Program Requirements:

The Assistant Secretary proposes the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Background:

The payment of stipends to students attending tribally controlled postsecondary career and technical institutions receiving assistance under section 117 of the Act was first authorized by the Carl D. Perkins Vocational and Technical Education Act of 1998 (Pub. L. 105-332), which was enacted on October 31, 1998. The Department established requirements for the payment of such student stipends in the notice inviting applications for new awards for FY 2001, which was the first grant competition conducted under the revised authority (see 66 FR 17035, March 28, 2001) (March 2001 Notice). Among other requirements, the March 2001 Notice required that, to be eligible for a stipend, a student must--

- (1) Be enrolled in a career and technical education

program funded under section 117 as at least a half-time student;

(2) Be in regular attendance and meet the tribally controlled postsecondary institution's attendance requirement;

(3) Maintain satisfactory progress in his or her course of study according to the tribally controlled institution's published standards of satisfactory progress; and

(4) Have an acute economic need (defined as an income at or below the poverty level) that prevents participation in a project funded under this program that cannot be met through a work-study program.

The March 2001 Notice also required that the amount of the stipend be determined by multiplying the number of hours a student actually attended a program by the greater of the minimum hourly wage that was prescribed by State or local law, or by the minimum hourly wage that is established under the Fair Labor Standards Act. However, an institution could only award a stipend to a student if, and to the extent that the stipend combined with other resources the student received did not exceed the student's

financial need, which was defined as the difference between the student's cost of attendance and the financial aid or other resources that would be used to defray the costs of the student participating in the project.

Authorization for section 117 grantees to pay student stipends was continued in Perkins IV. The May 2007 Notice established the same requirements for the payment of student stipends as the March 2001 Notice, except that the May 2007 Notice--

(1) Authorized payment of stipends to students whose attendance status was less than half-time;

(2) Permitted payment of a stipend to a student only when the student was taking a course for the first time;

(3) Did not define the term "acute economic need";
and

(4) Directed applicants to describe the procedure they intended to use to determine student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

For future TCPCTIP competitions, we propose to establish the same requirements for the payment of student stipends that were established by the May 2007 Notice. We

believe these requirements have worked well to ensure that TCPCTIP funds are used appropriately to assist only those students with an acute economic need that prevents their participation and that cannot be met through a work-study program. We note also that comparable requirements for the payment of student stipends have worked well and without controversy for nearly two decades in another program that provides assistance for career and technical education for Native American students--the Native American Career and Technical Education Program, authorized by section 116 of Perkins V. Finally, we note that the continuation of the May 2007 student stipend requirements is consistent with the Principles of Economic Mobility in Executive Order 13828, Reducing Poverty in America by Promoting Opportunity and Economic Mobility, which emphasize that work-capable individuals should be engaged in a work activity, which may include career and technical education, as a condition of receiving means-tested public assistance.

Proposed Program Requirements:

(a) Stipends may be paid to enable students to participate in a TCPCTIP career and technical education program.

(1) To be eligible for a stipend, a student must--

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a TCPCTIP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that prevents participation in a project funded under this program without a stipend and that cannot be met through a work-study program.

(b) The amount of a stipend is based on the greater of either the minimum hourly wage prescribed by State or local law or the minimum hourly wage established under the Fair Labor Standards Act.

(c) A grantee may only award a stipend if the stipend combined with other resources the student receives does not exceed the student's financial need. A "student's financial need" is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of participating in

a TCPCTIP project.

(d) To calculate the amount of a student stipend, a grantee would multiply the number of hours a student actually attends career and technical education instruction by the greater of the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of \$7.25 and a student attends classes for 20 hours a week, the student's stipend would be \$145 for the week during which the student attends classes ($\$7.25 \times 20 = \145).

(e) Grantees must maintain records that fully support their decisions to award stipends and the amounts that are paid, such as proof of a student's enrollment in a TCPCTIP, stipend applications, timesheets showing the number of attendance hours confirmed in writing by an instructor, student financial status information, and evidence that a student would not be able to participate in the TCPCTIP project without a stipend. (20 U.S.C. 1232f; 34 CFR 75.700-75.702, 75.730, and 75.731)

(f) An eligible student may receive a stipend when taking a course for the first time. However, a stipend may not be provided to a student who has already taken, completed, and had the opportunity to benefit from a course and is merely repeating the course.

PROPOSED DEFINITIONS:

Background:

We propose to establish a definition of "institutional support of career and technical education," a term used in the list of allowable expenses identified in section 117(e)(1)(D) of the Act. To clarify what direct expenditures this term includes, we propose to define this term to mean administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 and administering a grant awarded under section 117.

Under this proposed definition, for example, the costs associated with the accreditation of a particular career and technical education program funded under section 117 would be allowable direct costs, as would any expenditures related to administering a section 117 grant, such as the

salary of a project director. In contrast, any general administrative expenses incurred by an institution, such as the costs associated with the accreditation of the overall institution itself, would not be allowable direct costs under section 117. However, there would be no limitation on the indirect costs a section 117 grantee could charge to its grant. Moreover, consistent with section 117(c)(3), a grantee could use an unrestricted rate in calculating the indirect costs that may be charged to the grant.

We believe this proposed definition is consistent with the purposes of TCPCTIP and other pertinent provisions of section 117. For example, section 117(a) indicates that the grants made under section 117 are to "provide basic support for the education and training of Indian students," while section 117(b) states that grant funds are to be "used for career and technical education programs for Indian students and for the institutional support costs of the grant." The March 2001 and May 2007 Notices included comparable clarifications. We also propose to establish a definition of "stipend" that is intended to clarify its purpose and the circumstances under which stipends may be paid to students. The proposed definition is identical to

the definition of "stipend" that was used in the March 2001 and May 2007 Notices.

Proposed Definitions:

The Assistant Secretary proposes the following definitions for this program. We may apply one or both of these definitions in any year in which this program is in effect.

Institutional support of career and technical education means administrative expenses incurred by an eligible institution that are related to conducting a career and technical education program for Indian students that is assisted under section 117 of the Act and administering a grant awarded under section 117.

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Final Requirements and Definitions:

We will announce the final requirements and definitions in a document published in the *Federal Register*. We will determine the final requirements and definitions after considering responses to the proposed requirements and definitions and other information

available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these requirements and definitions, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771
Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred

to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to "transfer

rules” that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. The proposed priority and requirements would be utilized in connection with a discretionary grant program and, therefore, Executive Order 13771 is not applicable.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net

benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed requirements and definitions only on a reasoned determination that their benefits justify their costs. In choosing among

alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined are necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that these proposed requirements and definitions would not impose significant costs on tribally controlled postsecondary career and technical institutions eligible for assistance under section 117 of Perkins V. We also believe that the benefits of implementing the proposed

requirements and definitions justify any associated costs.

The Department believes that the proposed application requirements would help to ensure that: only institutions eligible for assistance under section 117 of the Act receive such assistance; grants provided under section 117 of the Act are awarded only for allowable, reasonable, and necessary costs; and eligible applicants consider carefully in preparing their applications how the grants may be used to improve career and technical education programs and the outcomes of the students who enroll in them. The program requirements and related definitions are necessary to ensure that taxpayer funds are expended appropriately.

The Department further believes that the costs imposed on an applicant by the proposed requirements and definitions would be largely limited to the paperwork burden related to meeting the application requirements and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. Entities selected for awards under section 117 of the Act would be able to pay the costs associated with implementing the program requirements related to student stipends with grant funds. Thus, the costs of these proposed

requirements and definitions would not be a significant burden for any eligible applicant.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995 (PRA): These proposed requirements and definitions do not contain any information collection requirements subject to the PRA. The Department is aware of fewer than nine tribally controlled postsecondary career and technical institutions that meet the eligibility requirements of section 117 of the Act and could thus be expected to apply in a response to a notice inviting applications. Information collection requirements imposed on nine or fewer individuals or entities are not subject to the PRA.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small

governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are institutions of higher education. We believe that the costs imposed on an applicant by the proposed requirements and definitions would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposed requirements and definitions would outweigh any costs incurred by the applicant.

Participation in TCPCTIP is voluntary. For this reason, the proposed application requirements would impose no burden on small entities unless they applied for funding under TCPCTIP. We expect that in determining whether to apply for TCPCTIP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a TCPCTIP grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application. The likely benefits of applying for a TCPCTIP

grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the identification of long- and short-range plans for the institution and its career and technical education programs. Additionally, proposed application requirement (a), which would direct applicants to document their eligibility under section 117 of the Act, would focus the attention of all prospective applicants on the eligibility requirements in section 117 of the Act and help discourage entities that do not meet them from incurring the time and expense of preparing a full application. The costs of meeting the other proposed requirements related to student stipends could be paid with grant funds and entities that do not receive a grant would not be required to meet them.

We believe that the proposed requirements and definitions would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published

in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 29, 2019.

Scott Stump,
*Assistant Secretary for Career,
Technical, and Adult Education.*

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